
Who's Your Nanny? Choice, Paternalism and Public Health in the Age of Personal Responsibility

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In June 2012, New York City Mayor Michael Bloomberg announced his plans for a ban on the sale of sugary beverages in containers larger than 16 ounces. Shortly thereafter, the Center for Consumer Freedom took out a full-page ad in the *New York Times* featuring Bloomberg photo-shopped into a matronly dress with the tag line “New Yorkers need a Mayor, not a Nanny.”¹ On television, the CATO Institute’s Michael Cannon declared, “This is the most ridiculous sort of nanny state-ism; [i]t’s none of the mayor’s business how much soda people are drinking.”² And in newspapers around the country, editorial pages featured headlines such as “Gulp! Yet Another Intrusion of the Nanny State.”³ Just like that, the public debate about this measure became focused on government overreach, while the public health problem of obesity (and of overconsumption of soda in particular) faded into the background.

Public health has a reputation for being a total buzzkill. Sure, people are worried about lung cancer and heart disease and diabetes. But who wants to give up cigarettes and caramel lattes and huge buckets of buttery popcorn in favor of tap water and broccoli and jogging? What about the right of adults to value a more pleasurable life over a longer, healthier one? What about parents’ rights to make their own choices about how to raise their kids, free of the condescend-

ing, class-biased intrusion of “billionaire do-gooders” like Bloomberg? Do we need the government to “nanny” us?

Historically, legal doctrine has privileged government intervention under the banner of public health. In the words of the Supreme Court in the 1905 case *Jacobson v. Massachusetts*, “[T]he liberty secured by the Constitution...does not import an absolute right in each person to be...wholly freed from restraint... ‘persons and property are subjected to all kinds of restraints and burdens in order to secure the general comfort, health, and prosperity of the state.’”⁴ Or, as Dr. Thomas Farley, Health Commissioner for New York City, put it more recently, “The reason we have government in the first place is to solve problems collectively that we can’t solve individually.”⁵ A belief that the government does (and should) have broad authority to protect and improve health, coupled with an understanding that collective action is often necessary to address public health challenges effectively, is central to the public health mindset.

Economic and civil libertarian scholars have questioned whether this vision of a strong government role is applicable to non-communicable disease threats and the social determinants of health.⁶ The questions they have raised are far from academic. Arguments about public health paternalism have cultural and political resonance. They are playing a role in political opposition to the adoption of new policy interventions and in legal challenges aimed at striking down existing public health laws.

This article, based on our panel presentations at the 2012 Public Health Law Conference, explores the forces behind the cultural and political resonance of concerns about public health paternalism, “personal

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responsibility,” and the “nanny state.” We also attempt to outline some possible paths forward from here.

When Is the Government Acting as a “Nanny”?

When does the government become a “nanny?” When it regulates adults? When it addresses self-regarding behavior? When it forces (or even just attempts to influence) behavior change? When it restricts consumer choice? When the evidence-basis for its intervention is unproven or mistrusted? While all of these issues have been raised, none of them fully explains the current opposition to proposed public health measures and even to long-standing interventions like water fluoridation and vaccination requirements.

As an academic matter, the distinction between self-regarding and other-regarding harm has been central to debates over paternalism.⁷ Controversy over the

heart disease, or stroke would be acceptable. Fortunately, survey data is to the contrary. The great majority of Americans support federal government programs to address health risks associated with obesity — in fact, exactly the same number support programs for obesity as for smoking.⁸ Likewise, the vast majority of people approve of seatbelt and motorcycle helmet laws, even though these safety measures are primarily self-regarding.⁹

The devil, it seems, is in the details. Although there is broad support for a government role in addressing non-communicable disease threats, that support has not extended to certain types of interventions. Perhaps the real issue here is restriction of choice. While behaviors that support public health — such as wearing a seatbelt or keeping guns locked and unloaded — can become social norms, they are often seen as jarring intrusions on personal choice when first pro-

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appropriate governmental response to obesity seems to be at the heart of the current backlash against public health. That may be because the harms caused by overeating and lack of physical activity are more purely self-regarding than those caused by a decision to not get vaccinated or a decision to smoke in a public place. There is no “secondhand smoke” when it comes to unhealthy eating and exercise habits. It has become de rigueur to cite the impact of obesity on health care costs borne by society, but those are *induced* externalities, caused as much by our increasingly collective approach to financing health care as they are by obesity. Arguments about costs are not going to be compelling to anyone who believes that paying for one’s health care costs should be purely a matter of “personal responsibility.” Instead, when faced with the costs associated with obesity, such a person would likely respond, “Right! That’s exactly what’s wrong with Obamacare! Didn’t I tell you broccoli was next?”

But is the self-regarding nature of the harm really what is behind the resonance of the nanny state slur? If so, then that is a huge problem for public health, because it would mean that virtually no government interventions to address the root causes of diabetes,

posed. Opposition to the New York City portion rule¹⁰ in particular seems to be tapping into this reflexive opposition to novel public health interventions.

On the other hand, the unpopular portion rule is not nearly as restrictive of choice as other measures — like bans on trans fats — which have not faced the same degree of opposition. There is no restriction on consumption, only on portion size; consumers can easily purchase two or more sixteen-ounce portions if they like. It may be that the reason the portion rule has provoked such ire is that it is so overt. It is an intervention that is likely to be directly experienced by consumers as restrictive.

But there is also something more powerful at play here. Rather than following any consistent ideological principle, the “nanny state” meme is heavily influenced by industry opposition to interventions that regulate unhealthy products (particularly those with high profit margins like soda). To some extent, well-funded opposition to public health interventions was entirely inevitable. When public health advocates seek to address the root causes of non-communicable diseases and injuries, they put themselves on a collision course with powerful, wealthy interests that are con-

tributing to those public health problems. The real difference between more restrictive trans-fat bans and less restrictive soda regulations may be that trans-fat bans do not prompt industry-funded opposition to the same degree that regulations of big soda do.

In responding to the Center for Consumer Freedom's nanny state ad, Bloomberg spokesman Marc LaVorgna stated: "It says an awful lot about the state of the soda industry that a tobacco company front group is attacking Mike Bloomberg on their behalf. This is the same organization that was founded to oppose bans of smoking in restaurants and bars."¹¹ Indeed, the same "nanny state" argument used to oppose the proposed soda portion restriction has also been used by industry-funded groups opposing restrictions on tobacco, alcohol, and firearms.

Why Does the "Nanny State" Slur Have Such Power?

Companies that sell tobacco, alcohol, junk food, and other products that are harmful to the public's health have an obvious incentive to oppose public health measures that threaten their profits. The question is why a range of disparate industries have all settled on the "nanny state" and "personal responsibility" themes as their mode of attack. Even if this attack is more a slur than a coherent and reasoned argument, what is it about the "nanny state" idea that resonates with the public?

The term "nanny state" is a powerful framing device. It uses evocative language to bring to mind negative associations — the state treating adults like children, not letting them make their own decisions, not letting them do anything fun. A single word, "nanny," brings all of that to mind and shuts down intelligent debate. Furthermore, the personal responsibility idea lying behind this "nanny state" concept may be tied to a broader feeling of anti-altruism. Many people do not want their own wealth to be redistributed to help others. They do not want their own choices restricted simply because others are making bad choices. And so they argue that those other people's problems are a matter of "personal responsibility." This viewpoint has deep psychological roots. Attribution of obesity and other health problems to personal failures "[s]erves a symbolic, or value expressive function..., reinforcing a world view consistent with a belief in a just world, self determination, the Protestant work ethic, self-contained individualism, and the notion that people get what they deserve."¹²

How Do We Move Forward from Here?

Moving forward in the face of the current backlash against the public health "nanny state" is going to

require sustained attention to framing — not just as a matter of public health messaging, but also as a matter of how we design and promote legal interventions. If you are starting any debate about whether this or that is a "nanny state" regulation, that is not a good place to be for public health. We need to replace the "nanny state" framing with a more positive vision of community action. Public health has a proud tradition of promoting equity and justice. We must not surrender the moral high ground to industry groups casting themselves as defenders of individual liberty.

In addition to framing public health interventions negatively, the "nanny state" slur implicitly frames them in highly individualistic terms. To return to the example of New York City portion rule, "nanny state" arguments focus the discussion on how the government is telling *individuals* what they can or cannot consume instead of letting them make these decisions for themselves. From this perspective, the government's role should be, at most, to educate individuals about healthy decisions. If they continue to consume too much, then they have no one but themselves to blame for the consequences.

A public health perspective, by contrast, begins the analysis by focusing on the problem and thinking about how we can come together as a community to address it. From this perspective, the consumption of sugary drinks, which is the largest source of added sugar in the typical American's diet, is a primary culprit and therefore a reasonable target for policy interventions. Limiting the default portion size of sugary drinks seems like a reasonable (and not terribly coercive) way to reduce caloric intake at the population level. Given that "[w]hen people are given larger portions they unknowingly consume more and do not experience an increased sense of satiety,"¹³ the City's policy is likely to be much more effective (and considerably less expensive) than an educational campaign aimed at changing behavior. Other policy interventions might target the advertising of sugary drinks, the widespread predominance of these products over healthier alternatives with smaller profit margins (including in schools and workplaces), and other social and cultural factors that promote overconsumption. Individuals acting alone are powerless to make these changes, but acting together through our government, we can protect the health of our communities.

As we seek to reframe the debate, we also need to be more cognizant of the ways that our own explicit or implicit support for certain kinds of public health interventions might be reinforcing the power of the personal responsibility message. For example, behav-

ioral public health interventions that target smokers or people who are obese — such as government programs promoting the imposition of higher health care costs and other penalties on individuals who fail to maintain a “healthy lifestyle”¹⁴ — can reinforce the message that so-called “lifestyle diseases” are primarily a matter of personal choices.

Instead of reaffirming the language of personal responsibility, we suggest utilizing the language of the democratic process. The “nanny state” slur invokes the image of Big Brother; by contrast, we should affirm that we, as communities, need to work together to solve our problems, including public health challenges. The goal of public health is collective problem solving, not authoritarianism. What we desire is an honest debate about our public health challenges and the best way to address them. Public health goals may conflict with the economic and personal interests of members of the community, but those tensions need to be resolved in an honest and straightforward way, free from the nanny state slur and other epithets that seek to shut down a reasonable dialogue before it begins.

Conclusion

The “nanny state” slur is intended to distract. The goal of those accusing public health advocates of being “nannies” is to move the discussion away from the actual public health problem at issue and towards a debate about government overreach. To effectively shift the discussion back to public health, we must reframe the broader conversation. If we argue defensively that “we are not nannies,” our arguments will be less than compelling. We need to lay out a public health vision about why our public health problems cannot be addressed through education and personal initiative alone, and why we need to work collectively to build healthier communities. Those opposed to public health measures have invested a lot of time and money in shaping the discourse surrounding public health issues. We cannot wait any longer to respond.

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